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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, DC 20463

FIRST GENERAL COUNSEL'S REPORT

CELA

RAD REFERRAL 14L-41

DATE RECEIVED: December 30, 2014

DATE OF NOTIFICATION: January 6, 2015

DATE OF LAST RESPONSE: March 11, 2015

DATE ACTIVATED: November 27, 2015

EARLIEST SOL: July 15, 2019

LATEST SOL: July 15, 2019

ELECTION CYCLE: 2014

RAD REFERRAL 15L-32

DATE RECEIVED: September 17, 2015

DATE OF NOTIFICATION: September 22, 2015

DATE OF LAST RESPONSE: November 27, 2015

DATE ACTIVATED: November 27, 2015

EARLIEST SOL: July 17, 2019

LATEST SOL: July 17, 2019

ELECTION CYCLE: 2014

SOURCE: Internally Generated

RESPONDENT: Joni for Iowa¹ and Cabell Hobbs in his
official capacity as treasurer²

RELEVANT STATUTES: 52 U.S.C. § 30104(b)(8)³
52 U.S.C. § 30116(f)
52 U.S.C. § 30118

¹ On November 5, 2014, the Committee filed an Amended Statement of Organization to change its name from Joni Ernst for U.S. Senate Inc. to Joni for Iowa. See Statement of Organization (Nov. 5, 2014), available at http://docquery.fec.gov/cgi-bin/fecimg?_14021221473+0.

² Bradley Crate was the treasurer at the time of the activity at issue in this matter. See Statement of Organization (July 10, 2013), available at <http://docquery.fec.gov/pdf/722/13020272722/13020272722.pdf>. On July 8, 2015, the Committee filed an amended Statement of Organization designating Cabell Hobbs as its treasurer. See Statement of Organization (July 8, 2015), available at <http://docquery.fec.gov/719/15020179719/15020179719.pdf>.

³ On September 1, 2014, the Federal Election Campaign Act of 1971, as amended (the "Act"), was transferred from Title 2 of the United States Code to new Title 52 of the United States Code.

1 11 C.F.R. § 103.3
2 11 C.F.R. § 104.3(d)
3 11 C.F.R. § 104.11(b)
4 11 C.F.R. § 111.43(a), (d), (e)
5

6 **INTERNAL REPORTS CHECKED:** Disclosure Reports
7

8 **FEDERAL AGENCIES CHECKED:** None
9

10 **I. INTRODUCTION**

11 The Reports Analysis Division ("RAD") referred Joni for Iowa and Cabell Hobbs in his
12 official capacity as treasurer (the "Committee") to the Office of General Counsel ("OGC") with
13 respect to two apparent violations of the Act. First, RR 14L-41 addresses the Committee's
14 apparent failure to disclose debts totaling \$571,042.05 on its original 2014 July Quarterly
15 Report.⁴ The Committee argues that the Commission should take no action because it could not
16 estimate debts owed to vendors before it had to file that report.⁵ Second, RR 15L-32 involves
17 the Committee's receipt of excessive and prohibited contributions totaling \$37,190 for the 2014
18 general election that were not timely refunded, reattributed, or redesignated.⁶ The Committee
19 again argues that the Commission should take no action, noting that the number of refunds was
20 small, and it made the refunds before the Referral.⁷

21 Because these referrals overlap, we address them together in one report and recommend
22 that the Commission open a matter under review ("MUR") and find reason to believe that the
23 Committee violated 52 U.S.C. §§ 30104(b)(8), 30116(f), and 30118 by failing to accurately

⁴ RAD Referral of Joni for Iowa, 14L-41 (December 30, 2014) ("Referral"), incorporated herein by reference.

⁵ Committee Resp. at 1 (Mar. 11, 2015).
6

⁷ Committee Resp. (RR 15L-32) at 1-2 (Nov. 27, 2015).

1 disclose debts and by knowingly accepting excessive and prohibited contributions, and by failing
2 to timely refund excessive and prohibited contributions. Additionally, we recommend that the
3 Commission enter into pre-probable cause conciliation with the Committee and approve the
4 attached conciliation agreement.

5 II. FACTUAL AND LEGAL ANALYSIS

6 A. Increased Activity-Debt Reporting Violations (RR 14L-41)

7 On July 15, 2014, the Committee timely filed its 2014 July Quarterly Report covering the
8 period from May 15, 2014, through June 30, 2014.⁸ The report disclosed no debts on Line 10
9 (Debts and Obligations Owed by the Committee) of the Summary Page.⁹ The report also
10 included post-election contributions designated for the 2014 primary election, which triggered a
11 Request for Additional Information ("RFAI") from RAD to the Committee on August 14, 2014,
12 asking whether the Committee had sufficient net debts outstanding for the primary election to
13 justify post-election fundraising.¹⁰ On September 18, 2014, the Committee filed an Amended
14 2014 July Quarterly Report that disclosed \$665,462.49 in debts.¹¹ A cover letter to the report
15 noted that the Committee "had determined that it had net-debts outstanding based on the invoices
16 received for primary expenses that had not been received in time to be included on the [original
17 2014 July Quarterly Report]."¹² The Committee further stated that at the time of the original

⁸ See Committee's 2014 July Quarterly Report (July 15, 2014), available at http://docquery.fec.gov/pdf/980/1_40204_63980/14020463980.pdf.

⁹ *Id.*

¹⁰ See Referral at 1.

¹¹ See Committee's First Amended 2014 July Quarterly Report (Sept. 18, 2014), available at <http://docquery.fec.gov/pdf/001/14020700001/14020700001.pdf>.

¹² *Id.*

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1 filing, "it was impossible to provide an accurate estimate of these debts, given the short amount
2 of time between the primary and the close-of-books for the report."¹³

3 On October 1, 2014, RAD sent the Committee an RFAI regarding the substantial increase
4 in debts disclosed on the Amended 2014 July Quarterly Report.¹⁴ The treasurer at the time,
5 Bradley Crate, responded that the Committee omitted the estimated debts from the original report
6 because of a "timing issue."¹⁵ RAD advised Crate to file a Miscellaneous Electronic Submission
7 ("Form 99") containing a more detailed explanation, which Crate did.¹⁶ The Form 99 reiterated
8 the statements made in the Committee's September 18, 2014, cover letter, and it also stated that,
9 at the suggestion of the Commission, the Committee disclosed estimated debts once it was able
10 to do so.¹⁷

11 On October 15, 2014, the Committee filed a second Amended 2014 July Quarterly
12 Report, disclosing \$571,042.05 in debts, a decrease of \$94,420.44 from the first amended
13 report.¹⁸ The Committee's cover letter to this report stated, in part, that the first amended report
14 disclosed more than \$94,000 in estimated debt that had actually been paid during the 2014 July
15 Quarterly reporting period.¹⁹

¹³ *Id.*

¹⁴ *See Referral at 2.*

¹⁵ *Id. at 3.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *See Committee's Second Amended 2014 July Quarterly Report (Oct. 15, 2014), available at*
<http://docquery.fcc.gov/pdf/496/14020840496/14020840496.pdf>.

¹⁹ *Id.*

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1 On December 30, 2014, RAD referred the Committee to OGC for amending its 2014 July
2 Quarterly Report to disclose additional debts totaling \$571,042.05.²⁰ OGC notified the
3 Committee of the Referral on January 6, 2015.²¹

4 The Committee's Response to the Referral reiterates that the amount of time between the
5 primary election and due date of the 2014 July Quarterly Report contributed to the reporting
6 errors in this matter.²² Specifically, the Committee notes that

7 Iowa held its Republican primary election on June 3, 2014. The
8 close of books for the July Quarterly Report was June 30, a mere
9 27 days after the primary, which was prior to the next billing cycle
10 for most vendors. That means vendors closed their books on the
11 same day as Joni for Iowa, and issued invoices *after* the close of
12 books. With the report due on July 15, the Committee had not even
13 received the invoices by the day the report was due.²³
14

15 The Committee also maintains that it was impossible to make a good-faith estimate of the
16 debts at issue on the 2014 July Quarterly Report. The Committee explains that it orally agreed to
17 pay vendors a "win bonus" if Ernst won the primary — which she did — and it was still
18 negotiating the exact amount of those bonuses when the report was due.²⁴

19 The Committee further argues that it was not required to amend its 2014 July Quarterly
20 Report at all. Citing 11 C.F.R. § 104.11(b), the Committee states that "[o]nce the exact amount
21 [of debt] is determined, the political committee shall either amend the report(s) containing the
22 estimate or indicate the correct amount on the report for the reporting period in which such

²⁰ See Referral.

²¹ Letter from Jeff S. Jordan, Assistant General Counsel-Complaints Examination and Legal Administration, FEC to Bradley Crate, Treasurer of the Committee (Jan. 6, 2015); see also *Agency Procedure for Notice to Respondents in Non-Complaint Generated Matters*, 74 Fed. Reg. 38,617 (Aug. 4, 2009).

²² Committee Resp. at 2.

²³ *Id.*

²⁴ *Id.*

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1 amount is determined.”²⁵ Thus, the Committee maintains that it did not have to disclose the debt
2 until it determined the correct amount, which would have been during the 2014 October
3 Quarterly reporting period. Accordingly, the Committee concludes that it “was under no
4 obligation to file an amended report to disclose debts once they were ascertained with
5 certainty.”²⁶

6 The Act and Commission regulations require political committees to disclose the amount
7 and nature of outstanding debts and obligations until those debts are extinguished.²⁷ A political
8 committee must file separate schedules for debts owed by and to the committee with a statement
9 explaining the circumstances and conditions under which each debt and obligation was incurred
10 or extinguished.²⁸ A debt or obligation of \$500 or less must be reported as of the time that
11 payment is made or within sixty days of the date on which the political committee incurs the
12 debt, whichever comes first, and a debt exceeding \$500 must be disclosed in the report that
13 covers the date on which the debt was incurred.²⁹ If the exact amount of a debt or obligation is

²⁵ *Id.* at 4.

²⁶ *Id.* After the Referral, on April 16, 2015, the Committee filed another Amended 2014 July Quarterly Report, which disclosed no debts owed by Committee, and provided no explanation for the reported change in debt from its previous amendments. See Committee's Third Amended 2014 July Quarterly Report (Apr. 16, 2015), available at <http://docquery.fec.gov/pdf/461/15020139461/15020139461.pdf>. On June 30, 2015, after this matter was initially activated, OGC asked RAD about this last debt reporting entry, and RAD confirmed with the Committee that the entry was a mistake. On July 8, 2015, the Committee filed another Amended 2014 July Quarterly Report, which reflected the full amount of debt at issue in this matter. See Committee's Fourth Amended 2014 July Quarterly Report (July 8, 2015), available at <http://docquery.fec.gov/pdf/689/15020179689/15020179689.pdf>. Since the Fourth Amendment merely verifies the original increase in reported debt that formed the basis of the referral and because RAD does not intend to make an additional referral for the mistaken Third Amendment, we do not recommend the Commission take any action pertaining to the mistaken Third Amendment to the 2014 July Quarterly Report.

²⁷ 52 U.S.C. § 30104(b)(8); 11 C.F.R. §§ 104.3(d), 104.11(a).

²⁸ See 11 C.F.R. § 104.11(a).

²⁹ See 11 C.F.R. § 104.11(b).

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1 not known, the report shall state that the amount reported is an estimate.³⁰ Once the exact
2 amount is determined, a political committee has two options: (1) amend the report(s) containing
3 the estimate; or (2) indicate the correct amount on the report for the reporting period in which
4 such amount is determined.³¹

5 Here, the information before the Commission conclusively shows that the Committee
6 violated the Act by failing to disclose any debt, actual or estimated, on its original 2014 July
7 Quarterly Report. Further, the Committee's arguments why the Commission should take no
8 action are unpersuasive. First, the Committee had 42 days between the June 3, 2014, primary
9 election and July 15, 2014, the report's due date, to report either actual or estimated debts, and it
10 presents no information supporting its assertion that this was not enough time to gather the
11 relevant data. The fact that the Committee may have been negotiating "win bonuses" around the
12 time the report was due was not an excuse to report no debt at all on the original report. The
13 Committee knew it owed some amount to its vendors, so reporting nothing was clearly
14 inaccurate. And it is reasonable to assume that the Committee knew its debts were substantial
15 because it engaged in extensive post-election debt-retirement fundraising to pay them.³² Under
16 these circumstances, 11 C.F.R. § 104.11(b) required the Committee to make a good-faith estimate
17 of its debts, and it did not.

18 Indeed, the Committee's remaining argument — that it was not required to file an
19 amended 2014 July Quarterly Report and could instead report the correct amount once it was
20 determined — reads the requirement to disclose estimated debts completely out of the regulation.

³⁰ *Id.*

³¹ *Id.*

³² *See Referral at 1-2.*

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1 Section 104.11(b) states that "if the exact amount of a debt or obligation is not known, the report
2 shall state that the amount reported is an estimate."³³ The provision on which the Committee
3 relies merely tells the Committee what it must do after it has already estimated its debts; it does
4 not mean that a Committee can ignore its responsibility to make an estimate in the first place.
5 We therefore recommend that the Commission open a MUR and find reason to believe that the
6 Committee violated 52 U.S.C. § 30104(b)(8).

7 **B. Acceptance of Excessive and Prohibited Contributions (RR 15L-32)**

8 As detailed in the second Referral, the Committee's 2014 October Quarterly and
9 30-Day Post-General Reports show that it received excessive and prohibited contributions
10 totaling \$37,190 for the 2014 general election from twenty-six individuals, one partnership, one
11 multicandidate political action committee, one non-multicandidate political action committee,
12 and three corporations.³⁴ The Committee did not timely refund, reattribute, or redesignate these
13 excessive and prohibited contributions.

14 On December 1, 2014, RAD sent the Committee an RFAI regarding the 2014 October
15 Quarterly Report, noting the Committee's receipt of excessive and potentially prohibited
16 contributions and requesting that the Committee take corrective action.³⁵ The Committee
17 responded by disclosing the untimely contribution refunds on three different reports.
18 Specifically, on December 4, 2014, the Committee filed the 2014 30-Day Post-General Report
19 covering the period from October 16, 2014, to November 24, 2014, which disclosed an untimely

³³ *Id.*

³⁴ RAD Referral of Joni for Iowa, 15L-32 (Sept. 17, 2015) ("Referral (RR 15L-32)"), incorporated herein by reference.

³⁵ *Id.* at 2.

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1 \$500 refund to one individual.³⁶ The Committee's 2014 Year-End Report, filed on January 30,
2 2015, and covering the period from November 25, 2014, to December 31, 2014, disclosed
3 untimely refunds totaling \$6,825 to three individuals and \$1,750 to three corporations.³⁷ Finally,
4 on July 15, 2015, the Committee filed its 2015 July Quarterly Report covering the period from
5 April 1, 2015, to June 30, 2015.³⁸ The Committee disclosed untimely refunds totaling \$4,000 to
6 one partnership and one non-multicandidate political action committee.³⁹

7 On March 12, 2015, RAD sent the Committee another RFAI regarding excessive
8 contributions revealed on its 2014 30-Day Post-General Report.⁴⁰ On April 15, 2015, the
9 Committee filed its 2015 April Quarterly Report covering the period from January 1, 2015, to
10 March 31, 2015. That report disclosed untimely refunds of excessive contributions totaling
11 \$24,115 from 22 individuals and one multicandidate political action committee.⁴¹

12 On September 16, 2015, RAD referred the Committee to OGC for failing to timely
13 remedy excessive and prohibited 2014 general election contributions totaling \$37,190. OGC

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* at 3.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* at 4.

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1 notified the Committee about this matter on September 22, 2015.⁴²

2 The Committee's Response concedes that it accepted excessive and prohibited
3 contributions, but argues that the Commission should take no further action in this matter.⁴³
4 Specifically, the Committee notes that: (1) the late refunds were relatively minor, as only 32
5 contributions were not refunded within the permitted 60 days; (2) it made all the refunds at issue
6 before the Referral; and (3) it has taken remedial steps to ensure compliance, including
7 establishing a new database that aggregates contributions more effectively.⁴⁴ The Committee
8 also states that its former compliance vendor failed to properly refund the contributions within
9 the prescribed 60-day period.⁴⁵ It notes that "[m]any of the excessive individual contributions
10 were received shortly before the election. Had the vendor performed as expected, it [vendor]
11 would have sought redesignation of the contributions to the 2020 primary election."⁴⁶ The
12 Committee concludes that "[b]ecause the vendor did not perform the tasks it contracted to
13 handle, it would be unfair to further punish [the Committee] for the vendor's errors."⁴⁷

⁴² Letter from Jeff S. Jordan, Assistant General Counsel-Complaints Examination and Legal Administration, FEC to Cabell Hobbs, Treasurer of the Committee (Sep. 22, 2015); *see also Agency Procedure for Notice to Respondents in Non-Complaint Generated Matters*, 74 Fed. Reg. 38,617 (Aug. 4, 2009) ("Commission's Notification Policy").

⁴³ Committee Resp. (RR 15L-32) at 1.

⁴⁴ *Id.* at 2-5. The Committee also argues that the Referral deprived it of due process by withholding factual documents supporting its contentions. *Id.* at 2. Specifically, the Committee notes that the Referral refers to a document called "Attachment 4" but did not provide it to Respondents. Attachment 4 is a log of communications between RAD staff and representatives of the Committee. Consistent with the Commission's Notification Policy and RAD's and OGC's normal practices, it was not provided to the Committee and the phone conversations were instead summarized in the Referral.

⁴⁵ *Id.* at 5.

⁴⁶ *Id.*

⁴⁷ *Id.*

1 Under the Act, an individual may not make a contribution to a candidate with respect to
2 any election in excess of the legal limit, which was \$2,600 per election during the 2014 election
3 cycle.⁴⁸ Candidates and political committees are prohibited from knowingly accepting excessive
4 contributions.⁴⁹ When a committee receives an excessive contribution, the committee must,
5 within 60 days of the contribution's receipt, either refund the excessive portion of the
6 contribution or obtain a redesignation or reattribution from the contributor.⁵⁰

7 The Act also prohibits political committees from accepting contributions from the general
8 treasury funds of corporations.⁵¹ If a committee receives a contribution that appears to be
9 prohibited, it must follow the procedures set forth at 11 C.F.R. § 103.3(b). Within 30 days of the
10 treasurer's receipt of the questionable contribution, the committee must make at least one written
11 or oral request for evidence that the contribution is legal, and must either confirm the legality of
12 the contribution or refund the contribution to the contributor and note the refund on the report
13 covering the period in which the refund was made.⁵²

14 It is undisputed that the Committee accepted prohibited and excessive contributions
15 totaling \$37,190 for the 2014 general election from individuals, corporations, and political action
16 committees, and that all of the refunds for these contributions were untimely. The Committee,
17 however, argues that the Commission should not pursue the violation because it ultimately
18 refunded all the contributions, and there were only 32 of them. Nevertheless, the amount in

⁴⁸ See 52 U.S.C. § 30116(a)(1)(A) and 11 C.F.R. § 110.1(b)(1).

⁴⁹ See 52 U.S.C. § 30116(f).

⁵⁰ See 11 C.F.R. § 103.3(b)(3).

⁵¹ See 52 U.S.C. § 30118.

⁵² See 11 C.F.R. § 103.3(b)(1).

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1 violation met a Commission-approved referral threshold, and the Committee made most of the
2 refunds between 130 and 150 days after the contributions' receipt, much later than provided for
3 by regulation.⁵³ Therefore, we recommend that the Commission find reason to believe that the
4 Committee violated §§ 30116(f) and 30118 by knowingly accepting excessive and prohibited
5 contributions, and by failing to timely refund those contributions.

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⁵³ With respect to the Committee's vendor error argument, we note that the Commission has not considered vendor error to be a valid exculpatory or mitigating factor in similar situations. *See, e.g.*, MUR 6568 (Heath Shuler for Congress) (finding that Committee failed to report disbursements caused by vendor's error) and MUR 6300 (Republican Party of Virginia) (finding RPV responsible for its vendor's failure to timely forward contributions and RPV's consequential reporting errors). The Commission has, however, taken vendor error into account as a mitigating factor in other types of cases, such as cases involving disclaimer violations. *See, e.g.*, MUR 6125 (McClintock for Congress) (robocall disclaimer violation dismissed due to possible vendor error, among other factors).

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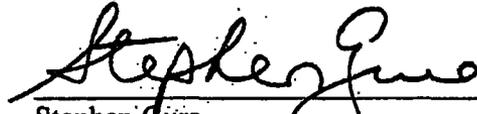
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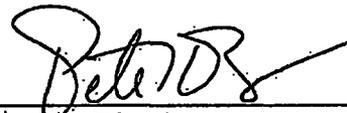
IV. RECOMMENDATIONS

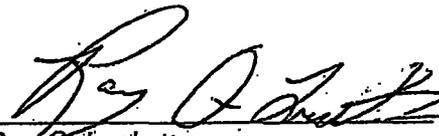
1. Open a MUR.
2. Find reason to believe that Joni for Iowa and Cabell Hobbs in his official capacity as treasurer violated 52 U.S.C. §§ 30104(b)(8), 30116(f), and 30118.
3. Approve the attached Factual and Legal Analysis.
4. Enter into conciliation with Joni for Iowa and Cabell Hobbs in his official capacity as treasurer prior to a finding of probable cause to believe.
5. Approve the attached conciliation agreement.

6. Approve the appropriate letter.

2.18.16
Date


Stephen Gura
Deputy Associate General Counsel for Enforcement


Peter G. Blumberg
Assistant General Counsel


Roy Q. Lockett
Staff Attorney

Attachments:

1. Factual and Legal Analysis
- 2.

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **MUR** _____

4
5 **RESPONDENT:**

Joni for Iowa
and Cabell Hobbs in his
official capacity as treasurer

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9 **I. INTRODUCTION**

10 The Reports Analysis Division ("RAD") referred Joni for Iowa and Cabell Hobbs, in his
11 official capacity as treasurer (the "Committee") to the Office of General Counsel ("OGC") with
12 respect to two apparent violations of the Federal Election Campaign Act of 1971, as amended
13 (the "Act"). First, the Committee apparently failed to disclose debts totaling \$571,042.05 on its
14 original 2014 July Quarterly Report.¹ In response, the Committee argues that the Commission
15 should take no action because it could not estimate debts owed to vendors before it had to file
16 that report.² Second, the Committee apparently received excessive and prohibited contributions
17 totaling \$37,190 for the 2014 general election that were not timely refunded, reattributed, or
18 redesignated. The Committee again argues that the Commission should take no action, noting
19 that the number of refunds was small, and it made the refunds before the Referral.³ Based on the
20 available information, the Commission has determined to find reason to believe that the
21 Committee violated 52 U.S.C. §§ 30104(b)(8), 30116(f), and 30118 by failing to accurately
22 disclose debts, by knowingly accepting excessive and prohibited contributions, and by failing to
23 timely refund excessive and prohibited contributions.

¹ Reports Analysis Division ("RAD"), Referral of Joni for Iowa, 14L-41 (December 30, 2014) ("Referral"), incorporated herein by reference.

² Committee Resp. at 1 (Mar. 11, 2015).

³ Committee Resp. (RR 15L-32) at 1-2 (Nov. 27, 2015).

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1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. Increased Activity—Debt Reporting Violations**

3 The Committee is a political committee registered with the Commission.⁴ On July 15,
4 2014, the Committee timely filed its 2014 July Quarterly Report covering the period from
5 May 15, 2014, through June 30, 2014.⁵ The report disclosed no debts on Line 10 (Debts and
6 Obligations Owed by the Committee) of the Summary Page.⁶ The report also included post-
7 election contributions designated for the 2014 primary election, which triggered a RAD Request
8 for Additional Information (“RFAI”) from RAD to the Committee on August 14, 2014, asking
9 whether the Committee had sufficient net debts outstanding for the primary election in order to
10 legally conduct post-election fundraising.⁷ On September 18, 2014, the Committee filed an
11 Amended 2014 July Quarterly Report that disclosed \$665,462.49 in debts.⁸ A cover letter
12 included with the report noted that the Committee “had determined that it had net-debts
13 outstanding based on the invoices received for primary expenses that had not been received in
14 time to be included on the [original 2014 July Quarterly Report].”⁹ The Committee further stated
15 that at the time of the original filing, “it was impossible to provide an accurate estimate of these

⁴ See Statement of Organization (July 10, 2013), available at <http://docquery.fec.gov/pdf/722/13020272722/13020272722.pdf>.

⁵ See Committee 2014 July Quarterly Report (July 15, 2014), available at <http://docquery.fec.gov/pdf/980/14020463980/14020463980.pdf>.

⁶ *Id.*

⁷ See Referral at 1.

⁸ See Committee First 2014 Amended July Quarterly Report (Sept. 18, 2014), available at <http://docquery.fec.gov/pdf/001/14020700001/14020700001.pdf>.

⁹ *Id.*

1 debts, given the short amount of time between the primary and the close-of-books for the
2 report.”¹⁰

3 On October 1, 2014, RAD sent the Committee a RFAI regarding the substantial increase
4 in debts that were disclosed on the Amended 2014 July Quarterly Report.¹¹ In a telephone
5 conversation on October 3, 2014, the Committee treasurer at that time, Bradley Crate, informed
6 the RAD Analyst that the Committee omitted the estimated debts from the original report
7 because of a “timing issue.”¹² The Analyst advised Crate to file a more detailed explanation on a
8 Miscellaneous Electronic Submission (“Form 99”), which Crate did on the same day.¹³ On that
9 Form 99, the Committee reiterated the statements made in the Committee’s September 18, 2014,
10 cover letter to its Amended 2014 July Quarterly Report — that it was impossible to provide an
11 accurate estimate of debts given the short amount of time between the primary and the close-of-
12 books for the report.¹⁴ He also stated that the Committee disclosed estimated debts once it was
13 able to do so, and at the suggestion of the Commission.¹⁵

14 On October 15, 2014, the Committee filed a second Amended 2014 July Quarterly
15 Report, disclosing \$571,042.05 in debts on Line 10 of the Summary Page, a decrease of

¹⁰ *Id.*

¹¹ *See Referral at 2.*

¹² *Id.* at 3.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

1 \$94,420.44 from the first Amended 2014 July Quarterly Report.¹⁶ The Committee's cover letter
2 to this amended report, stated, in part that it filed this amendment because the first amended 2014
3 July Quarterly Report disclosed more than \$94,000 in estimated debt that had already been
4 paid.¹⁷

5 On December 30, 2014, RAD referred the Committee to OGC for amending its 2014 July
6 Quarterly Report to disclose additional debts totaling \$571,042.05. OGC notified the Committee
7 about this matter on January 6, 2015.¹⁸

8 The Committee's Response to the Referral reiterates that the amount of time between the
9 primary election and due date of the 2014 July Quarterly Report contributed to the reporting
10 errors in this matter.¹⁹ Specifically, the Committee notes that

11 Iowa held its Republican primary election on June 3, 2014. The
12 close of books for the July Quarterly Report was June 30, a mere
13 27 days after the primary, which was prior to the next billing cycle
14 for most vendors. That means vendors closed their books on the
15 same day as Joni for Iowa, and issued invoices *after* the close of
16 books. With the report due on July 15, the Committee had not even
17 received the invoices by the day the report was due.²⁰

18
19 The Committee also maintains that it was impossible to make a good-faith estimate of the
20 debts at issue on the 2014 July Quarterly Report. The Committee explains that it orally agreed to

¹⁶ See Committee Second 2014 Amended July Quarterly Report (Oct. 15, 2014), *available at* <http://docquery.fec.gov/pdf/496/14020840496/14020840496.pdf>.

¹⁷ *Id.*

¹⁸ Letter from Jeff S. Jordan, Assistant General Counsel-Complaints Examination and Legal Administration, FEC to Bradley Crate, Treasurer of the Committee (Jan. 6, 2015); *see also Agency Procedure for Notice to Respondents in Non-Complaint Generated Matters*, 74 Fed. Reg. 38,617 (Aug. 4, 2009).

¹⁹ Committee Resp. at 2.

²⁰ *Id.*

1 pay vendors a “win bonus” if Ernst won the primary — which she did — and it was still
2 negotiating the exact amount of those bonuses when the report was due.²¹

3 The Committee further argues that it was not required to amend its 2014 July Quarterly
4 Report at all. Citing 11 C.F.R. § 104.11(b), the Committee states that “[o]nce the exact amount
5 [of debt] is determined, the political committee shall either amend the report(s) containing the
6 estimate or indicate the correct amount on the report for the reporting period in which such
7 amount is determined.”²² Thus, the Committee maintains that it did not have to disclose the debt
8 until it determined the correct amount, which would have been during the 2014 October
9 Quarterly reporting period. Accordingly, the Committee concludes that it “was under no
10 obligation to file an amended report to disclose debts once they were ascertained with
11 certainty.”²³

12 The Act and Commission regulations require political committees to disclose the amount
13 and nature of outstanding debts and obligations until those debts are extinguished.²⁴ A political
14 committee must file separate schedules for debts owed by and to the committee with a statement

²¹ *Id.*

²² *Id.* at 4.

²³ *Id.* After the Referral, on April 16, 2015, the Committee filed another Amended 2014 July Quarterly Report, which disclosed no debts owed by Committee, and provided no explanation for the reported change in debt from its previous amendments. See Committee's Third Amended 2014 July Quarterly Report (Apr. 16, 2015), available at <http://docquery.fec.gov/pdf/461/15020139461/15020139461.pdf>. On June 30, 2015, after this matter was initially activated, OGC asked RAD about this last debt reporting entry, and RAD confirmed with the Committee that the entry was a mistake. On July 8, 2015, the Committee filed another Amended 2014 July Quarterly Report, which reflected the full amount of debt at issue in this matter. See Committee's Fourth Amended 2014 July Quarterly Report (July 8, 2015), available at <http://docquery.fec.gov/pdf/689/15020179689/15020179689.pdf>. Since the Fourth Amendment merely verifies the original increase in reported debt that formed the basis of the referral and because RAD does not intend to make an additional referral for the mistaken Third Amendment, the Commission does not take any action pertaining to the mistaken Third Amendment to the 2014 July Quarterly Report.

²⁴ 52 U.S.C. § 30104(b)(8); 11 C.F.R. §§ 104.3(d), 104.11(a).

1 explaining the circumstances and conditions under which each debt and obligation was incurred
2 or extinguished.²⁵ A debt or obligation of \$500 or less must be reported as of the time that
3 payment is made or within sixty days of the date on which the political committee incurs the
4 debt, whichever comes first, and a debt exceeding \$500 must be disclosed in the report that
5 covers the date on which the debt was incurred.²⁶ If the exact amount of a debt or obligation is
6 not known, the report shall state that the amount reported is an estimate.²⁷ Once the exact
7 amount is determined, a political committee has two options: (1) amend the report(s) containing
8 the estimate; or (2) indicate the correct amount on the report for the reporting period in which
9 such amount is determined.²⁸

10 Here, the information before the Commission conclusively shows that the Committee
11 violated the Act by failing to disclose any debt, actual or estimated, on its original 2014 July
12 Quarterly Report. Further, the Committee's arguments why the Commission should take no
13 action are unpersuasive. First, the Committee had 42 days between the June 3, 2014, primary
14 election and July 15, 2014, the report's due date, to report either actual or estimated debts, and it
15 presents no information supporting its assertion that this was not enough time to gather the
16 relevant data. The fact that the Committee may have been negotiating "win bonuses" around the
17 time the report was due was not an excuse to report no debt at all on the original report. The
18 Committee knew it owed some amount to its vendors, so reporting nothing was clearly

²⁵ See 11 C.F.R. § 104.11(a).

²⁶ See 11 C.F.R. § 104.11(b).

²⁷ *Id.*

²⁸ *Id.*

1 inaccurate. And it is reasonable to assume that the Committee knew its debts were substantial
2 because it engaged in extensive post-election debt-retirement fundraising to pay them.²⁹ Under
3 these circumstances, 11 C.F.R. § 104.11(b) required the Committee to make a good-faith estimate
4 of its debts, and it did not.

5 Indeed, the Committee's remaining argument — that it was not required to file an
6 amended 2014 July Quarterly Report and could instead report the correct amount once it was
7 determined — reads the requirement to disclose estimated debts completely out of the regulation.
8 Section 104.11(b) states that "if the exact amount of a debt or obligation is not known, the report
9 shall state that the amount reported is an estimate."³⁰ The provision on which the Committee
10 relies merely tells the Committee what it must do after it has already estimated its debts; it does
11 not mean that a Committee can ignore its responsibility to make an estimate in the first place.
12 Therefore, the Commission finds reason to believe that Joni for Iowa and Cabell Hobbs in his
13 official capacity as treasurer violated 52 U.S.C. § 30104(b)(8).

14 **B. Acceptance of Excessive and Prohibited Contributions**

15 Additionally, the Committee's 2014 October Quarterly and 30-Day Post-General Reports
16 show that it received excessive and prohibited contributions totaling \$37,190 for the 2014
17 general election from twenty-six individuals, one partnership, one multicandidate political action
18 committee, one non-multicandidate political action committee, and three corporations.³¹ The

²⁹ See Referral at 1-2.

³⁰ *Id.*

³¹ RAD Referral of Joni for Iowa, 15L-32 (Sept. 17, 2015) ("Referral (RR 15L-32)"), incorporated herein by reference.

1 Committee did not timely refund, reattribute, or redesignate these excessive and prohibited
2 contributions.

3 On December 1, 2014, RAD sent the Committee an RFAI regarding the 2014 October
4 Quarterly Report, noting the Committee's receipt of excessive and potentially prohibited
5 contributions and requesting that the Committee take corrective action.³² The Committee
6 responded by disclosing the untimely contribution refunds on three different reports.
7 Specifically, on December 4, 2014, the Committee filed the 2014 30-Day Post-General Report
8 covering the period from October 16, 2014, to November 24, 2014, which disclosed an untimely
9 \$500 refund to one individual.³³ The Committee's 2014 Year-End Report, filed on January 30,
10 2015, and covering the period from November 25, 2014, to December 31, 2014, disclosed
11 untimely refunds totaling \$6,825 to three individuals and \$1,750 to three corporations.³⁴ Finally,
12 on July 15, 2015, the Committee filed its 2015 July Quarterly Report covering the period from
13 April 1, 2015, to June 30, 2015.³⁵ The Committee disclosed untimely refunds totaling \$4,000 to
14 one partnership and one non-multicandidate political action committee.³⁶

15 On March 12, 2015, RAD sent the Committee another RFAI regarding excessive
16 contributions revealed on its 2014 30-Day Post-General Report.³⁷ On April 15, 2015, the

³² *Id.* at 2.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* at 3.

³⁶ *Id.*

³⁷ *Id.*

1 Committee filed the 2015 April Quarterly Report covering the period from January 1, 2015, to
2 March 31, 2015. That report disclosed untimely refunds of excessive contributions totaling
3 \$24,115 from 22 individuals and one multicandidate political action committee.³⁸

4 On September 16, 2015, RAD referred the Committee to OGC for failing to timely
5 remedy excessive and prohibited 2014 general election contributions totaling \$37,190. OGC
6 notified the Committee about this matter on September 22, 2015.³⁹

7 The Committee's Response concedes that it accepted excessive and prohibited
8 contributions, but argues that the Commission should take no further action in this matter.⁴⁰
9 Specifically, the Committee notes that: (1) the late refunds were relatively minor, as only 32
10 contributions were not refunded within the permitted 60 days; (2) it made all the refunds at issue
11 before the Referral; and (3) it has taken remedial steps to ensure compliance, including
12 establishing a new database that aggregates contributions more effectively. The Committee also
13 states that its former compliance vendor failed to properly refund the contributions within the
14 prescribed 60-day period.⁴¹ It notes that "[m]any of the excessive individual contributions were
15 received shortly before the election. Had the vendor performed as expected, it [vendor] would
16 have sought redesignation of the contributions to the 2020 primary election."⁴² The Committee

³⁸ *Id.* at 4.

³⁹ Letter from Jeff S. Jordan, Assistant General Counsel-Complaints Examination and Legal Administration, FEC to Cabell Hobbs, Treasurer of the Committee (Sep. 22, 2015); *see also Agency Procedure for Notice to Respondents in Non-Complaint Generated Matters*, 74 Fed. Reg. 38,617 (Aug. 4, 2009) ("Commission's Notification Policy").

⁴⁰ Committee Resp. (RR 15L-32) at 1.

⁴¹ *Id.* at 5.

⁴² *Id.*

1 concludes that “[b]ecause the vendor did not perform the tasks it contracted to handle, it would
2 be unfair to further punish [the Committee] for the vendor’s errors.”⁴³

3 Under the Act, an individual may not make a contribution to a candidate with respect to
4 any election in excess of the legal limit, which was \$2,600 per election during the 2014 election
5 cycle.⁴⁴ Candidates and political committees are prohibited from knowingly accepting excessive
6 contributions.⁴⁵ When a committee receives an excessive contribution, the committee must,
7 within 60 days of the contribution’s receipt, either refund the excessive portion of the
8 contribution or obtain a redesignation or reattribution from the contributor.⁴⁶

9 The Act also prohibits political committees from accepting contributions from the general
10 treasury funds of corporations.⁴⁷ If a committee receives a contribution that appears to be
11 prohibited, it must follow the procedures set forth at 11 C.F.R. § 103.3(b). Within 30 days of the
12 treasurer’s receipt of the questionable contribution, the committee must make at least one written
13 or oral request for evidence that the contribution is legal, and must either confirm the legality of
14 the contribution or refund the contribution to the contributor and note the refund on the report
15 covering the period in which the refund was made.⁴⁸

⁴³ *Id.*

⁴⁴ See 52 U.S.C. § 30116(a)(1)(A) and 11 C.F.R. § 110.1(b)(1).

⁴⁵ See 52 U.S.C. § 30116(f).

⁴⁶ See 11 C.F.R. § 103.3(b)(3).

⁴⁷ See 52 U.S.C. § 30118.

⁴⁸ See 11 C.F.R. § 103.3(b)(1).

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1 It is undisputed that the Committee accepted prohibited and excessive contributions
2 totaling \$37,190 for the 2014 general election from individuals, corporations, and political action
3 committees, and that all of the refunds for these contributions were untimely. The Committee,
4 however, argues that the Commission should not pursue the violation because it ultimately
5 refunded all the contributions, and there were only 32 of them. Nevertheless, the amount in
6 violation met a Commission-approved referral threshold, and the Committee made most of the
7 refunds between 130 and 150 days after the contributions' receipt, much later than provided for
8 by regulation.⁴⁹ Therefore, the Commission finds reason to believe that the Committee violated
9 §§ 30116(f) and 30118 by knowingly accepting excessive and prohibited contributions, and
10 by failing to timely refund those contributions.

⁴⁹ With respect to the Committee's vendor error argument, the Commission has not considered vendor error to be a valid exculpatory or mitigating factor in similar situations. *See, e.g.*, MUR 6568 (Heath Shuler for Congress) (finding that Committee failed to report disbursements caused by vendor's error) and MUR 6300 (Republican Party of Virginia) (finding RPV responsible for its vendor's failure to timely forward contributions and RPV's consequential reporting errors). The Commission has, however, taken vendor error into account as a mitigating factor in other types of cases, such as cases involving disclaimer violations. *See, e.g.*, MUR 6125 (McClintock for Congress) (robocall disclaimer violation dismissed due to possible vendor error, among other factors).